

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0722

Reversed
No Disqualification

PROCEDURAL HISTORY: On April 28, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and therefore was disqualified from receiving unemployment insurance benefits effective March 27, 2022 (decision # 91913). Claimant filed a timely request for hearing. On June 14, 2022, ALJ Frank conducted a hearing, and on June 16, 2022 issued Order No. 22-UI-196333, affirming decision # 91913. On June 25, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant's argument contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented her from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing when reaching this decision. EAB considered claimant's argument to the extent it was based on the record.

FINDINGS OF FACT: (1) BKD Employee Services, LLC employed claimant as a dining services coordinator at one of the employer's care facilities from October 2019 until March 31, 2022.

(2) Claimant's father and stepmother were elderly and in poor health due to several medical conditions, and required around-the-clock care as a result. While claimant worked for the employer, she and her husband lived in Oregon, and her parents lived in Texas. At this time, claimant's sister and nephew, who also lived in Texas, provided much of the caregiving that claimant's parents required. However, claimant's sister and nephew each ran their own businesses, and their caregiving responsibilities interfered with the operation of their businesses.

(3) Around late March 2022, claimant's sister requested that claimant come to Texas to take over caregiving responsibilities for their parents because the sister and nephew were no longer able to care for them while operating their businesses. At the time, both of claimant's parents were being cared for in medical facilities, but were due to be discharged and sent home shortly.

(4) On March 30, 2022, claimant notified the employer that she intended to resign effective the following day so that she could move to Texas and take care of her parents. On March 31, 2022, claimant voluntarily quit working for the employer. Prior to quitting, claimant did not request time off from work or leave under the Family Medical Leave Act (FMLA). Had she done so, the employer may have granted her FMLA leave.

(5) On or around March 31, 2022, claimant and her husband departed for Texas. On April 5, 2022, before they arrived in Texas, claimant's father died. As of June 14, 2022, claimant was still providing caregiving services for her stepmother in Texas.

CONCLUSIONS AND REASONS: Claimant voluntarily quit work with good cause.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless they prove, by a preponderance of the evidence, that they had good cause for leaving work when they did. ORS 657.176(2)(c); *Young v. Employment Department*, 170 Or App 752, 13 P3d 1027 (2000). "Good cause . . . is such that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would leave work." OAR 471-030-0038(4) (September 22, 2020). "[T]he reason must be of such gravity that the individual has no reasonable alternative but to leave work." OAR 471-030-0038(4). The standard is objective. *McDowell v. Employment Department*, 348 Or 605, 612, 236 P3d 722 (2010). A claimant who quits work must show that no reasonable and prudent person would have continued to work for their employer for an additional period of time.

Per OAR 471-030-0038(5)(g), leaving work with good cause includes, but is not limited to, leaving work due to compelling family reasons. "Compelling family reasons" is defined under OAR 471-030-0038(1)(e) as follows:

* * *

(B) The illness or disability of a member of the individual's immediate family necessitates care by another and the individual's employer does not accommodate the employee's request for time off[.]

* * *

Claimant voluntarily quit working for the employer because she needed to move to Texas to care for her parents. As a preliminary matter, while claimant *did* quit to care for family members whose illness or disability necessitated care by another, claimant did *not* quit for compelling family reasons, as that term is defined under OAR 471-030-0038(1)(e)(B). For that provision to apply to claimant's circumstances, the record must show that the employer did not accommodate claimant's request for time off. As the rule is written, however, the employer's refusal to accommodate a request for time off is predicated on claimant having first *requested* time off. As claimant did not request time off before quitting, claimant did not quit for a compelling family reason. Therefore, whether claimant voluntarily quit work with good cause must be considered under the standard good-cause analysis of OAR 471-030-0038(4).

The record shows that claimant quit work for a grave reason. Although claimant's sister and nephew had previously been taking care of claimant's parents, they became unable or unwilling to do so any longer. The record does not show that any other persons were available to take on the level of care that

claimant's parents required. Therefore, claimant had reason to believe that her parents would not receive the amount of care that they required if claimant did not move to Texas and care for them.

The order under review concluded that, while claimant may have quit for a grave reason, she quit work without good cause because she failed to seek the reasonable alternative of requesting FMLA leave prior to quitting. Order No. 22-UI-196333 at 3. The record does not support this conclusion. The Court of Appeals has held that a protracted, unpaid leave of absence is not a reasonable alternative to quitting. *See Sothras v. Employment Division*, 48 Or App 69, 616 P2d 524 (1980); *See also Taylor v. Employment Division*, 66 Or App 313, 674 P2d 64 (1984) (claimant had good cause to leave work after being suspended without pay for over a month, and there was no end in sight to the suspension). Here, the record does not show whether claimant had any paid time off (PTO) available to her at the time that she quit.

Nevertheless, even if claimant *did* have PTO that she could have used while on leave, it is unlikely that the amount of PTO she had accrued would have covered much of the leave. The record does not show that claimant had reason to believe, at the time that she quit, that the caregiving her parents required was likely to be short in duration. Further, at the time of the hearing, more than two months after she quit work, claimant was still caring for her stepmother. In other words, claimant had reason to believe that her parents' caregiving needs were likely to last for a protracted period of time. Even if claimant was eligible for FMLA leave, and even if some of it was covered by PTO, it is not reasonable to conclude that the employer would have permitted claimant to take a leave of absence that could continue indefinitely and unpredictably. Therefore, seeking a leave of absence was not a reasonable alternative to quitting.

Because claimant quit work for a reason of such gravity that she had no reasonable alternative but to quit, claimant voluntarily quit work with good cause, and is not disqualified from receiving benefits based on the work separation.

DECISION: Order No. 22-UI-196333 is set aside, as outlined above.

D. Hettle and A. Steger-Bentz;
S. Serres, not participating.

DATE of Service: September 22, 2022

NOTE: You may appeal this decision by filing a Petition for Judicial Review with the Oregon Court of Appeals within 30 days of the date of service listed above. *See* ORS 657.282. For forms and information, you may write to the Oregon Court of Appeals, Records Section, 1163 State Street, Salem, Oregon 97310 or visit the Court of Appeals website at courts.oregon.gov. Once on the website, use the 'search' function to search for 'petition for judicial review employment appeals board'. A link to the forms and information will be among the search results.

NOTE: This decision reverses an order that denied benefits. Please note that payment of benefits, if any are owed, may take approximately a week for the Department to complete.

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Understanding Your Employment Appeals Board Decision

English

Attention – This decision affects your unemployment benefits. If you do not understand this decision, contact the Employment Appeals Board immediately. If you do not agree with this decision, you may file a Petition for Judicial Review with the Oregon Court of Appeals following the instructions written at the end of the decision.

Simplified Chinese

注意 – 本判決會影響您的失業救濟金。如果您不明白本判決，請立即聯繫就業上訴委員會。如果您不同意此判決，您可以按照該判決結尾所寫的說明，向俄勒岡州上訴法院提出司法複審申請。

Traditional Chinese

注意 – 本判決會影響您的失業救濟金。如果您不明白本判決，請立即聯繫就業上訴委員會。如果您不同意此判決，您可以按照該判決結尾所寫的說明，向俄勒岡州上訴法院提出司法複審申請。

Tagalog

Paalala – Nakakaapekto ang desisyong ito sa iyong mga benepisyo sa pagkawala ng trabaho. Kung hindi mo naiintindihan ang desisyong ito, makipag-ugnayan kaagad sa Lupon ng mga Apela sa Trabaho (Employment Appeals Board). Kung hindi ka sumasang-ayon sa desisyong ito, maaari kang maghain ng isang Petisyon sa Pagsusuri ng Hukuman (Petition for Judicial Review) sa Hukuman sa Paghahabol (Court of Appeals) ng Oregon na sinusunod ang mga tagubilin na nakasulat sa dulo ng desisyon.

Vietnamese

Chú ý - Quyết định này ảnh hưởng đến trợ cấp thất nghiệp của quý vị. Nếu quý vị không hiểu quyết định này, hãy liên lạc với Ban Kháng Cáo Việc Làm ngay lập tức. Nếu quý vị không đồng ý với quyết định này, quý vị có thể nộp Đơn Xin Tái Xét Tư Pháp với Tòa Kháng Cáo Oregon theo các hướng dẫn được viết ra ở cuối quyết định này.

Spanish

Atención – Esta decisión afecta sus beneficios de desempleo. Si no entiende esta decisión, comuníquese inmediatamente con la Junta de Apelaciones de Empleo. Si no está de acuerdo con esta decisión, puede presentar una Aplicación de Revisión Judicial ante el Tribunal de Apelaciones de Oregon siguiendo las instrucciones escritas al final de la decisión.

Russian

Внимание – Данное решение влияет на ваше пособие по безработице. Если решение Вам непонятно – немедленно обратитесь в Апелляционный Комитет по Трудоустройству. Если Вы не согласны с принятым решением, вы можете подать Ходатайство о Пересмотре Судебного Решения в Апелляционный Суд штата Орегон, следуя инструкциям, описанным в конце решения.

Khmer

ចំណុចសំខាន់ – សេចក្តីសម្រេចនេះមានផលប៉ះពាល់ដល់អត្ថប្រយោជន៍គ្មានការងារធ្វើរបស់លោកអ្នក។ ប្រសិនបើលោកអ្នកមិនយល់អំពីសេចក្តីសម្រេចនេះ សូមទាក់ទងគណៈកម្មការឧទ្ធរណ៍ការងារភ្លាមៗ។ ប្រសិនបើលោកអ្នកមិនយល់ស្របចំពោះសេចក្តីសម្រេចនេះទេ លោកអ្នកអាចដាក់ពាក្យប្តឹងសុំឲ្យមានការពិនិត្យរឿងក្តីឡើងវិញជាមួយតុលាការឧទ្ធរណ៍រដ្ឋ Oregon ដោយអនុវត្តតាមសេចក្តីណែនាំដែលសរសេរនៅខាងចុងបញ្ចប់នៃសេចក្តីសម្រេចនេះ។

Laotian

ເອົາໃຈໃສ່ – ຄຳຕັດສິນນີ້ມີຜົນກະທົບຕໍ່ກັບເງິນຊ່ວຍເຫຼືອການຫວ່າງງານຂອງທ່ານ. ຖ້າທ່ານບໍ່ເຂົ້າໃຈຄຳຕັດສິນນີ້, ກະລຸນາຕິດຕໍ່ຫາຄະນະກຳມະການອຸທອນການຈ້າງງານໃນທັນທີ. ຖ້າທ່ານບໍ່ເຫັນດີນຳຄຳຕັດສິນນີ້, ທ່ານສາມາດຍື່ນຄຳຮ້ອງຂໍການທົບທວນຄຳຕັດສິນນຳສານອຸທອນລັດ Oregon ໄດ້ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄຳຕັດສິນນີ້.

Arabic

هذا القرار قد يؤثر على منحة البطالة الخاصة بك، إذا لم تفهم هذا القرار، إتصل بمجلس منازعات العمل فوراً، و إذا كنت لا توافق على هذا القرار، يمكنك رفع شكوى للمراجعة القانونية بمحكمة الاستئناف بأوريغون و ذلك بإتباع الإرشادات المدرجة أسفل القرار.

Farsi

توجه - این حکم بر مزایای بیکاری شما تاثیر می گذارد. اگر با این تصمیم موافق نیستید، بلافاصله با هیأت فرجام خواهی استخدام تماس بگیرید. اگر از این حکم رضایت ندارید، می‌توانید با استفاده از دستور العمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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